RECENT DECISIONS

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ANIMALS—BAILMENT—LIABILITY OF BAILOR FOR INJURIES BY VICIOUS HORSE.—The defendant bailed a horse to X by the day. The jury found that X had knowledge of its vicious propensities and that the defendant also had knowledge thereof. While in the possession of X, the horse bit the plaintiff. *Held,* the defendant was liable for the injuries. *Stapleton* v. *Butensky* (App. Div. 1st Dept. 1919) 177 N. Y. Supp. 18.

Where a bailment of an animal is made, the bailor knowing it to be vicious, but with no notice thereof in the bailee, the bailor is liable for resulting injuries, not under the absolute liability doctrine, but on the ground of negligence. *White* v. *Steadman* [1913] 3 K. B. 340; *Lynch* v. *Richardson* (1895) 163 Mass. 160, 39 N. E. 801. But since the bailee in the instant case had knowledge of the animal's viciousness, the case must be sustained, if at all, under the doctrine that one who keeps a wild animal does so at his peril. A so-called domestic animal falls within this rule when its keeper has knowledge of its viciousness. Salmond, Torts (4th ed.) § 127(2). It would seem, from an examination of the cases, that in every case to which the rule of absolute liability has been applied, the possession and control of the animal has been in the defendant or his agent or servant. Although there are no cases directly in point, it is submitted that, apart from statute, liability does not depend upon ownership but upon possession or harboring; *Stamp* v. *Eighty-sixth Street Amusement Co.* (1916) 95 Misc. 599, 159 N. Y. Supp. 683 (*semble*); *Miller* v. *Reeves* (Wash. 1918) 172 Pac. 815 (*semble*); he who keeps or controls the animal is responsible. Salmond, *op. cit.,* § 128(4); Ingham, Animals, 406; Robson, Trespasses and Injuries by Animals, 71. The instant case, therefore, is clearly without the rule, and it would be a grievous extension to hold a person absolutely liable for the acts of an animal over which he has no control. Especially is this so because the modern tendency seems to be to narrow the absolute liability doctrine to cases where the keeper has been at fault. See 22 Harvard Law Rev. 465, 478, 484; but *cf.* 32 Harvard Law Rev. 420. This stand is analogically supported by the cases exempting the owner of cattle from the general rule of absolute liability for trespass, where the cattle are under the control of, and in the possession of a bailee for a term. *Harrison* v. *McClellan* (1910) 137 App. Div. 508, 121 N. Y. Supp. 822; *Atwater* v. *Lowe* (1886) 39 Hun. 150; see *Van Slyck* v. *Snell* (N. Y. 1872) 6 Lans. 299, 302. It would seem therefore that the court in the instant case erred in allowing the plaintiff to recover from the bailor.

CONSTITUTIONAL LAW—EMPLOYERS' LIABILITY ACTS—LIABILITY WITHOUT FAULT.—The plaintiff recovered under an Arizona statute, providing for the liability of employers in all hazardous occupations for the death or injury of any employee due to conditions of such occupation, except where caused by the employee himself; the remedy afforded

being an action for damages. On appeal to the Supreme Court, *held*, the statute is constitutional, four judges dissenting on the ground that liability for damages, as opposed to mere compensation, cannot be imposed without fault. *Arizona Copper Co.* v. *Hammer* (1919) 39 Sup. Ct. 553.

It would seem that the Supreme Court in the instant case, though guarded in its language, has recognized the much debated principle that fault, while generally the basis of liability at common law, is, as far as the Constitution is concerned, indispensable only in so far as its existence is necessary to establish a causal connection between the acts out of which the liability arises and the injury sought to be remedied by the legislature. For discussion of the theory and constitutionality of similar statutes, see 10 Columbia Law Rev. 751; 11 Columbia Law Rev. 475; 15 Columbia Law Rev. 709. It is to be noted, however, that the statute in the instant case applies only to hazardous occupations, and the weighty dissent makes it doubtful whether the court will uphold similar statutes if applicable to non-hazardous occupations as well.

CONSTITUTIONAL LAW—LIBERTY OF SPEECH AND PRESS—ESPIONAGE ACT. —The appellants were convicted under the Espionage Act, 40 Stat. 219, as amended 40 Stat. 553, U. S. Comp. Stat. (1918) § 10212*c*, in the Federal District Court of printing and publishing, in New York City, circulars counselling a strike in munition factories, a general tie-up of industry, and armed resistance to the Government's Russian program. Their avowed and apparent purpose was to prevent intervention in Russia by the Associated Governments. The convictions were sustained by the Supreme Court, Justices Holmes and Brandeis dissenting on the ground that the Espionage Act, if constitutional, must contemplate actual intent to produce the effects complained of, which intent they found lacking in the instant case. *Abrams* v. *United States* (1919) 40 Sup. Ct. 17.

That "freedom of speech and of the press" does not compass unbounded license is well established, see *Robertson* v. *Baldwin* (1897) 165 U. S. 275, 281, 17 Sup. Ct. 326, its apparent intendment being to protect publications of an unharmful character, as measured by standards of the common law in force contemporaneously with the adoption of the constitutional provision. Cooley, Const. Lim. (7th ed.) 604, 605. And words which ordinarily would be within the privilege assured by that provision may become subject to prohibition when of such a nature, and used in such circumstances, as to create a clear and present danger that they will bring about substantive evils which Congress has power to prevent. Holmes, *J.*, in *Schenck* v. *United States* (1919) 249 U. S. 47, 39 Sup. Ct. 247. The same distinguished jurist has recognized that since, in time of war, but slight causation may be required for effecting far-reaching and disastrous consequences, persons who, with this knowledge, counsel resistance to the war program of the Government, are properly subject to Federal prosecution; the fact that interference with war activities was incidental to a propaganda involving expressions of a general and conscientious belief, being immaterial. *Debs* v. *United States* (1919) 249 U. S. 211, 39 Sup. Ct. 252. It is submitted that the instant case is indistinguishable as regards intent, from that last cited. Appellants' express disclaimer of German sympathy indicated realization that their conduct might result to the enemy interest. But even though the presence of sufficient criminal